

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JUNE 25, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 382**

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**Introduced by Assembly Member Ammiano**  
**(Coauthor: Assembly Member Block)**  
**(Coauthor: Senator Romero)**

February 23, 2009

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An act to amend Section 2636 of the Penal Code, relating to the Department of Corrections and Rehabilitation.

LEGISLATIVE COUNSEL'S DIGEST

AB 382, as amended, Ammiano. Department of Corrections and Rehabilitation: inmates and wards: classification.

Existing law requires the Department of Corrections and Rehabilitation to classify inmates and wards in order to prevent inmate and ward sexual violence and to promote inmate and ward safety, as specified. Existing law also requires the department to consider specified risk factors when classifying the inmate.

This bill would add the sexual orientation and gender identity of the inmate or ward, as specified, to the list of risk factors to be considered.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. (a) The Legislature finds and declares that  
2 inmates and wards of the Department of Corrections and

1 Rehabilitation may be at a heightened risk of sexual violence and  
2 abuse based on certain risk factors, including being young, being  
3 lesbian, gay, bisexual, or transgender, not having served a prior  
4 term of commitment, or having a history of mental illness.

5 (b) It is the intent of the Legislature in the enacting this act to  
6 ensure that the Department of Corrections and Rehabilitation (1)  
7 recognizes that wards or inmates may be at increased risk based  
8 on these factors, and (2) provides vulnerable inmates or wards who  
9 are determined to be at risk with heightened protection in  
10 classification and housing decisions, without automatically  
11 subjecting them to highly restrictive or isolated settings or denying  
12 them access to programs and services.

13 SEC. 2. Section 2636 of the Penal Code is amended to read:

14 2636. For the purposes of this section, all references to  
15 classification of wards shall take effect upon the adoption of a  
16 classification system for wards developed by the Department of  
17 Corrections and Rehabilitation in compliance with *Farrell v. Allen*,  
18 Alameda County Superior Court Case No. RG 03079344.

19 The following practices shall be instituted to prevent sexual  
20 violence and promote inmate and ward safety in the Department  
21 of Corrections and Rehabilitation:

22 (a) The Department of Corrections and Rehabilitation inmate  
23 classification and housing assignment procedures shall take into  
24 account risk factors that can lead to inmates and wards becoming  
25 the target of sexual victimization or of being sexually aggressive  
26 toward others. Relevant considerations include:

27 (1) Age of the inmate or ward.

28 (2) Self-reported safety concerns related to the sexual orientation  
29 and gender identity of the inmate or ward.

30 (3) Whether the offender is a violent or nonviolent offender.

31 (4) Whether the inmate or ward has served a prior term of  
32 commitment.

33 (5) Whether the inmate or ward has a history of mental illness.

34 (b) The Department of Corrections and Rehabilitation shall  
35 ensure that staff members intervene when an inmate or ward  
36 appears to be the target of sexual harassment or intimidation.

37 (c) The Department of Corrections and Rehabilitation shall not  
38 require any inmate or ward to disclose or report his or her sexual  
39 orientation or gender identity at any time, and a disclosure or report

1 shall not be discredited solely because it was not provided at an  
2 earlier point in time.

3 (d) The Department of Corrections and Rehabilitation is  
4 prohibited from disciplining or otherwise punishing an inmate or  
5 ward if the inmate or ward fails to disclose or report his or her  
6 sexual orientation or gender identity during all or part of his or her  
7 term of commitment.

8 (e) Nothing in this section shall be construed to require or justify  
9 expansion or construction of Department of Corrections and  
10 Rehabilitation facilities.

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